IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.6450 OF 2005
(LEAVE TO APPEAL)
IN
CRI.APPEAL NO. OF 2005

The State of Maharashtra ..Applicant

Vs.

Shri. Keshav Balu Deokare ..Respondent

...

Mr.S.R.Shinde A.P.P. for the Applicant-State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : MARCH 5, 2007

P.C.

1. Heard the learned A.P.P. for the Applicant-State.

2. Being aggrieved by the judgment and order dated 6.4.2005 passed by the learned Special Judge (P.O.C.) Thane, this application for leave to file appeal against acquittal is filed by the State. By the impugned judgment and order, the respondent-accused is acquitted under Section 5(1)(e) read with 5(2) of Prevention of Corruption Act. I have perused the judgment and order of the learned Special Judge and the evidence which has

been produced by the learned A.P.P.

3. The learned Special Judge has acquitted the respondent-accused on the ground that the sanction was defective. The respondent-accused was an employee of Maharashtra State Electricity Board as an Engineer. At the time of filing complaint, the Respondent was a Deputy Engineer. It is the prosecution case that the then Chief Executive Engineer P.W.1 Kamble accorded sanction for prosecution. He being competent to appoint and remove a person from the post of Deputy Engineer. The sanction order is signed by Shri.Kamble as Chief Engineer of Kalyan. However, on perusal thereof, it is seen that the sanction is accorded by the Board. It is mentioned therein that theBoard having considered the material, is fully satisfied that there is a prima facie case made out against the accused. This clearly shows that sanction was accorded not by Mr.Kamble for himself but for the Board. Thus, Mr.Kamble did not accord sanction in his capacity as Chief Engineer being the competent authority to appoint and remove a person from the post of Deputy Engineer but the sanction was accorded by the Board. If the

sanction was accorded by the Board, it could only have been on the basis of a resolution passed in the meeting by the Board. Mr.Kamble admitted that there was no resolution to grant sanction. There was no material to show that Mr.Kamble was authorised to sign on behalf of the Board. It was necessary for the prosecution to show that in what capacity Mr.Kamble signed the order on behalf of the Board. However, there is no explanation for the same. Moreover, the sanction order does not show that Mr.Kamble considered the material on record and came to the conclusion regarding grant of sanction. On the basis of these facts, the learned Special Judge has acquitted the respondent-accused. Looking to the evidence on record, I am of the opinion that the view taken by the learned Special Judge is a reasonable and possible view.

4. It is well settled that if the view of acquittal could have been reasonably arrived at then the mere circumstance that the appellate Court would have taken a different view, would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, I

am referring to only two of them i.e. **AIR 1971 S.C. 66 Khedu Mohton and Ors. Vs. State of Bihar and C. Anthony Vs. K.G.Raghavan Nair (2003) 1 SCC 1.** In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Special Judge is a reasonable and possible view, hence, no interference is called for.

5. In this view of the matter, application for leave to appeal is rejected.

[V.K.Tahilramani, J.]